

Theology vol 91.

A
S E R M O N,
ON
THE EXCELLENCE
OF
BRITISH JURISPRUDENCE:
PREACHED
ON THE TENTH OF MARCH, 1799,
IN THE
CATHEDRAL CHURCH OF SALISBURY,
BEFORE
THE JUDGES OF ASSIZE.

BY WILLIAM COXE, A.M. F.R.S. F.A.S.
RECTOR OF BEMERTON, AND
DOMESTIC CHAPLAIN TO THE LORD BISHOP OF SALISBURY.

K

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 *The Profits of the Sale will be appropriated
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TO THE
HON. SIR FRANCIS BULLER, BART.

One of his Majesty's Justices

OF THE COURT OF COMMON PLEAS,

AND THE

HON. SIR NASH GROSE, KNIGHT,

One of His Majesty's Justices

OF THE COURT OF KING'S BENCH,

Judges of Assize

FOR THE WESTERN CIRCUIT;

TO

EDWARD HINXMAN, ESQ.

High Sheriff of the County of Wilts;

AND TO

THE GENTLEMEN OF THE GRAND JURY;

THIS SERMON,

(Published at their united Request)

IS RESPECTFULLY INSCRIBED,

BY THEIR OBEDIENT

HUMBLE SERVANT,

Bemerton,
March 14, 1799.

The Author.

HON. SIR FRANCIS WILLIAMS BART.

OF THE COURT OF COMMON PLEAS.

HON. SIR JOHN GOSSETT BART.

OF THE COURT OF KING'S BENCH.

FOR THE WINTER TERM.

EDWARD HINXMAN ESQ.

THE ATTORNEY AT LAW.

THIS IS TO CERTIFY

IN WITNESS WHEREOF

BY THESE PRESENTS

EDWARD HINXMAN

Attorney at Law

London

A SERMON.

Proverbs, chap. viii. ver. 15.

BY ME KINGS REIGN, AND PRINCES DECREE JUSTICE.

IN this chapter the inspired Writer personifies Wisdom, and justly gives her the precedence above riches and honour. With the most sublime conceptions, and in the most magnificent language, he represents Wisdom as a Divine Being, dwelling with God, and presiding with Him at the Creation of the world:

*“ Doth not Wisdom cry, and Understanding
“ put forth her voice ?*

B

“ I was

*" I was set up from everlasting, from the
" beginning, or ever the earth was.*

*" Before the mountains were settled, be-
" fore the hills were brought forth.*

*" While as yet he had not made the earth,
" nor the fields, nor the highest part of the
" dust of the world.*

*" When he prepared the Heavens, I was
" there: when he set a compass upon the face
" of the depth:*

*" When he established the clouds above:
" when he strengthened the fountains of the
" deep:*

*" When he gave to the sea his decree, that
" the waters should not pass his command-
" ment: when he appointed the foundations
" of the earth:*

*" Then I was by him, as one brought up
" with*

“with him: and I was daily his delight, rejoicing always before him.”

In the midst of this sublime passage, Wisdom is described as the foundation of all civil government, and the basis of human jurisprudence.

*“BY ME KINGS REIGN, AND PRINCES
“DECREE JUSTICE.”*

In another place, the same inspired Writer says:—

*“Mercy and truth preserve the King, and
“he establisheth the land by judgment.”**

From these, as well as from many other passages in Holy Writ, we may infer, that Government is of divine origin, and that those Princes and States, who rule with wisdom, and duly temper justice with mer-

* Proverbs, xx. 28.—xxix. 4.

cy, best fulfil the intentions of Providence, who formed man a social being, and framed for the children of Israel those laws and institutions, which rendered them, as long as they were obedient, a powerful, and a happy people. God himself condescended to be their King and Law-giver. The Decalogue, or Ten Commandments, which he pronounced from Mount Sinai, were the first written Laws ever delivered to mankind; and are founded on those principles of Wisdom and Goodness, which are the great characteristics of his Providence, in the works of the creation.

This short and simple code inculcates the Being and Superintendence of One God; and the folly and wickedness of worshipping representations of the Deity, and of bowing down to idols. It commands reverence and submission to the Almighty; sets apart one day in the week for public worship; a benevolent institution, which gives rest to the Labourer, and comfort to the Weary, which
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tends to civilize and reform that large and most useful class of society, the labouring Poor. It enjoins Obedience to Parents; forbids the commission of Murder and Adultery; confirms the security of property by the prohibition of Theft, condemns false accusation and perjury, strikes at the root of injustice and oppression, by controuling even the desires and inclinations of the mind, and recommends, in every situation of life, Contentment and Resignation.

Whence could be derived such a simple and complete system of religious and civil duties!—A system, which the united talents and learning of the Heathen world, in all its civilized glory of Greece or Rome, could not invent: whence, but from God Himself, the Fountain of all Wisdom, the Author of all Good, and the Father of all Mercy.

Our blessed Saviour, who came upon earth, “*not to destroy, but to fulfil the Law*
“ *and*

“ *and the Prophets,*”* adopted this divine Code, promulgated by his Almighty Father, and ingrafted on it the precepts of that pure and perfect religion, which he was commissioned to preach, and to sanctify by his great example.

The fundamental principles of Morality, both in the Law and the Gospel, were intrinsically the same; but our Saviour extended the knowledge and practice of that moral institute, which had hitherto been confined to a peculiar people. He tempered the severe justice of the Jewish Law, with a due proportion of goodness and mercy. He gave stability to virtue, by inculcating a future state of rewards and punishments, and by proving to mankind, from his own resurrection, that “ *this corruptible shall put on incorruption, and this mortal shall put on immortality.*”†

Hence we may trace the superiority of

* St. Matt. v. 7.

† Corinth. xv. 24.

Christian

Christian Nations, in Government and Jurisprudence, over those who are unenlightened by Revelation. Hence also, among Christian Nations, we may observe a striking pre-eminence in those, who approach nearest to the primitive excellence of the Gospel.

On these principles, the system of British Jurisprudence is most conspicuous among all the Nations of the earth, for Wisdom, Justice, and Mercy: and I shall, on the present occasion, attempt to point out the most striking particulars, which constitute this merited claim of superiority.

In submitting these particulars to the consideration of those who are now present, it would be highly presumptuous to address myself to that part of this venerable Assembly, whose lives have been passed in the study and administration of the Laws. Rather let me appeal to those persons, who follow other occupations, and professions; and who, perhaps, have not directed their
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attention to this part of our excellent Constitution.

It was the peculiar favour and blessing of Providence, that, (at a period, when the world was plunged in Barbarism, and the arts of Civilization were almost lost, when this Country enjoyed a brief respite from hostile incursions, conducted with all the ferocious and predatory horrors which marked the times,) a Christian and patriot Monarch,* fixed the basis of that Constitution, which has survived the storms of civil commotion, and braved the fury of successful invasion; which by progressive improvement, is formed into a system so perfect, and so truly congenial to the condition, habits, and dispositions of Englishmen, that a similar blessing is sought for in vain amidst the records of the past, or the efforts of the present age.

This Constitution unites the wisdom of

• Alfred.

the

the most complicated, with the facility of most simple forms, and is, as nearly as the works of frail and feeble man can approach perfection, perfect in all its parts. All classes of society are blended without confusion, and yet distinguished without opposition or separation. There is no person so exalted, who can offend with impunity, there is no person so humble, to whom in favour of industry, perseverance, or genius, the road to honour and wealth is not open. This Constitution is so well adapted to all conditions of life, that every man is at once the guardian, the censor, and the surety of his neighbour.

One of the chief blessings derived from this Constitution, is a scheme of Jurisprudence, as perfect and as pure as human judgment could possibly devise. By this the highest are secured in the enjoyment of their wealth and honour, the lowest are protected in their safety, and the reward of their honest industry; and both in what
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is still more inestimable, the jewel of an unfulfilled character.

The first and most excellent feature of English Jurisprudence, is the separation of the judicial from the executive and legislative functions. Public liberty could not long subsist, in any state, where those functions were united. If the judicial power was joined with the executive, the union would overbalance the legislative branch of the Constitution; if with the legislative; life, liberty, and property, would be subject to the decisions of arbitrary judges, to be regulated by their own opinions, and not by any fundamental principles of law.

In consequence of this separation of the executive, legislative, and judicial functions, every man, who claims a right, or seeks to redress an injury, applies, with cheerfulness and confidence, to a public and open court; where the most abject
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are not excluded, and where the most exalted, or most distinguished by Majesty itself, find no favour.

These Courts are under the presidency of Judges, who have, added to the advantages of a liberal education, an incessant, steady, and long practice in the science of the law: who are gratified with all those marks of external respect, which are calculated to inspire reverence and awe; whose integrity is secured by an honourable competency, and the permanence of their official dignity.

Without tracing minutely the steps* through which these advantages were attained,

* Before the Revolution, these Magistrates were appointed by the King, and removable *at pleasure*, hence they were dependent on the Crown; the arbitrary measures pursued by James the Second, were principally carried on, under the sanction of the Law, and enforced by venal, or timid Judges. This glaring deficiency in the administration of common Justice, was remedied in the reign of our great deliverer William the Third. The Commission of Judges

tained, or the calamities with which the want of them was attended, it will fill the patriot with pleasure to reflect, that within our own times, this great bulwark of British Liberty, received its full completion. Our present Sovereign at his Accession, declared, with a liberality of sentiment which claims our gratitude, “that he
“looked upon the independence, and up-
“rightness of the Judges, as essential to
“the impartial administration of justice,
“as one of the best securities of the Rights
“and Liberties of his subjects, and as
“most conducive to the honour of the
“Crown.”

Judges were no longer dependent on the Royal pleasure, but continued during their good behaviour, and they were removable only on the address of both Houses of Parliament. Still, however, their Commissions were vacated on the demise of the Crown. In the reign of Queen Anne, their Commissions were prolonged till six months after the demise of the Crown. But it was reserved to our present Sovereign, to render the Judges wholly independent. In consequence of the noble declaration which he made at his Accession, their Commissions notwithstanding the demise of the Crown, were continued *during good behaviour*, and their salaries increased.

From

From that period, the office was rendered permanent, notwithstanding even the demise of the Crown. The integrity of this High Magistracy, was still further secured, by a liberal addition to their salaries.

It is a true remark, almost without an exception, that in all countries, where the appointment of Judges is temporary, and their income inadequate to their station and dignity, the Courts of Justice are partial, prejudiced, and corrupt. But in this favoured Realm, where these evils are remedied, it may be asserted with a full confidence, which no one can contradict, that not a single Magistrate is, I will not say, guilty, but even suspected of corruption, prejudice, or partiality. In what country, or among what people, either ancient or modern, could such a public assertion be viewed in any other light, than as vain glorious and false boasting. But here it is an appeal, addressed no less
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to the understanding than to the heart; an appeal dictated by truth, and sanctioned by experience.

Few words are wanting, before an English audience, to point out the excellence of the Trial by Jury; that great bulwark of our Constitution and Liberties, which other countries have either not adopted, or have in vain attempted to imitate. This noble distinction of English Jurisprudence by which every man is judged by his Peers, renders the administration of justice impartial and equal, to the meanest, as well as to the highest subject of the realm.

There is no injury against property, dignity, or character, which is not cognizable before this just and incorruptible tribunal: not a mere court, where a Judge, unacquainted with the parties, an alien to their domestic habits, presides, but a Jury, fairly selected from their equals, and from the neighbourhood of their abodes, whose
decisions

decisions are balanced in the exact scale of expected retribution. Thus every man, either as a Party, Juror, or Witness, is interested in the support, and in a certain degree, is a qualified judge, of the merits of that system under which he lives.

But if such is the respect due, if such is the admiration, of that part of the law which relates to social regulation, with what enthusiastic veneration must we speak of the criminal code! How shall we adequately praise, how shall we sufficiently adore the benignity of that Author of all good, who has permitted us alone, among all nations, to possess so perfect a mode of justice?

The preparatory steps, and solemn proceedings, which are necessary before an offender can be consigned to punishment, are calculated to protect innocence against the efforts of envy, malice, or wanton aggression. The Magistrates and Jurors
must

must all be severally convinced that the culprit is guilty, before the lowest individual can suffer the penalty inflicted for the violation of law. Nor can the smallest complaint be justly made, that the purposes of justice are neglected, or that property and life are not guarded with the minutest attention.

Among the excellent establishments of our Jurisprudence, is the office of High Sheriff, who is justly entitled the Guardian of the County. To him the custody of the Prisons is committed, and under his direction, the sentence of the laws is carried into execution. By his oath he is bound to do right, as well to the poor as to the rich; and to do no wrong for gift, reward, or promise, favour, or hatred. From the mode of his appointment, he is usually a person respectable from character, independent from fortune, and attached to the Constitution. By his situation and habits of life, he is naturally a friend to humanity; and with
a libe-

a liberality unknown in other countries, he undertakes this responsible trust, and expensive office, without present emolument, or the hope of future reward.

The important and beneficial office of Justice of the Peace, is filled by gentlemen of character, property, and abilities; who act from pure, liberal, and disinterested motives. They enjoy no salary, have no emoluments; they dedicate their time and labour to preserve the peace, to hear and determine certain offences, to compose dissensions, to suppress riots, and to commit persons accused of breaking the laws.

To the poor, the benefit of this institution is incalculably great. The Justices are advocates for "*the needy, and him that has no helper.*" They stand between them and the Parochial Officer; they receive appeals, attend to complaints, relieve oppressions, and soften the severity of the

laws, framed to prevent the portion of the needy from becoming the prey of the idle and profligate.

Many who now hear me, will, I trust, acknowledge the truth of these observations; will recollect, with gratitude, that in times of scarcity and distress, in times of tumult and confusion, the most inestimable advantage has been derived from their efforts and interference; and will bless an institution which confers such benefits on the Community, without entailing the smallest burthen on the subject.

But such men, however amiable in private life, however exalted by learning, situation, or manners, are fallible mortals; and therefore no individual can be put to that bar, where his life, liberty, country, or character, may be involved in the issue, until another Tribunal, a Grand Jury, be convinced that the proofs of guilt are sufficient

ficient to warrant a trial. Yet even the resolutions of these Jurors, though selected from that class of the Community which is most enlightened, and most independent, weigh not, in the slightest degree, against the accused, but on the contrary, their acquittal generally operates to the total suppression of the charge.

And now, when the concurring opinions of the Magistrate, and of the Grand Jury, have consigned the culprit to be judged by God and his country, he enters the public Court, at full liberty to employ every effort which his judgment, or even his prejudices, may suggest. He enjoys the full power of challenging a certain number of Jurors without assigning a reason; he finds that the Law, in assuming the solemnity of Justice, has dismissed the frown of terror. Every man is, in spite of calumny, in spite even of well founded suspicion, deemed innocent, till he is found guilty. No fact against him is taken on

presumption, but on the best supported, the most logical, the most conclusive proof. No previous stain of character, no abjectness of situation, no depravity of morals, enter into the solemn account. The Jury feel the interest of humanity strongly pleading against the shedding of human blood; the Counsel exert every effort which knowledge and practice can supply, and the Judge, (admire this instance of the extreme humanity of the English Law) the Judge himself, is, in virtue of his office, in virtue of his oath, the advocate for the prisoner.

Is our admiration to end here? No. It receives its highest impulse from the contemplation of that truly benign maxim, approaching, as near as human infirmity can approach, to divine benevolence: "It is better that a hundred guilty should escape, than that one innocent man should suffer."

Can we sufficiently admire the infusion
of

of this godlike principle into the Courts of Judicature, which thus tempers Justice with Mercy, and gives hope to despondency itself. Whence can such a godlike principle be derived, but from the Fountain of all Mercy, from the Institutes of God himself, in the Holy Scriptures; an emanation of that Divine Being, "*the fruit of whose Spirit, is long suffering;*"* and "*whose wisdom is full of mercy.*"†

This humane principle, which pervades the whole system of English Jurisprudence, justifies that seeming imperfection in the constitution of Juries, unanimity in their verdict. For, although it is not reasonable to expect, that twelve men, selected by lot, should uniformly agree in their opinion upon points of law and evidence, which are frequently of a dubious nature, yet, as nothing but a full conviction can extort an unanimous verdict of guilt, the Juror who

* Galat. v. 22.

† St. James, iii. 17.

diffents

diffents from any of his brethren, will more readily resign his opinion to the side of Mercy, than persist in that of Condemnation.*

Nor can the casual misapplication, or unrelenting severity of Law, operate to the disadvantage of the man, whom misfortune or mistake may have rendered unadvisedly guilty. The Jury, not bred to the Law, not accustomed to construe its decrees so rigidly, as to omit making a due allowance for the failings of human nature, have the privilege to recommend Mercy. The Judge, experienced in the records of crime, and deeply read in the fallibility of the human heart, receives and sanctions by a respite the favourable recommendation; and the King, the truly paternal protector of every one, even the meanest of his subjects, in the exertion of his Constitutional Prerogative, which is the brightest jewel in his

* Paley's Principles of Moral and Political Philosophy, c. 8.

crown, dispenses Pardon, either absolutely or conditionally, as he judges most consistent with the feelings of humanity, and the general good of the people committed to his care.

Where shall we look for a parallel to this admirable, this blessed Constitution? Not in the records of ancient times, which rather excite wonder, that systems so imperfect should ever have existed; than that they should have decayed. Not in the delirious dreams of modern philosophy, the effects of which it is impossible to contemplate without horror, or to speak of in a language suited to this place and this occasion. Not in any of these is the equal of the British Constitution to be found: “ It
“ may therefore teach the most discontented
“ to acquiesce in the Government of his
“ country, to reflect, that the pure, and
“ wise, and equal administration of the
“ Laws, forms the first end and blessing of
“ social union; and that this blessing is enjoyed by him in a perfection, which he
“ will

“ will seek in vain, in any other nation of
“ the world.”*

To preserve a blessing, so inestimable, let us, in the first place, lift up our hearts in humble, yet ardent thanks to that Almighty Father, who permitted his only Son to give, in his own Person, that Rule of Right, the basis and test of every wise system:—that Rule of Right, which ancient learning could not rival, which modern philosophy would improve in vain—“ *Love thy neighbour as thyself, and do unto all men as thou wouldst they should do unto thee.*”†

Pursuing this train of reflection, ye who present yourselves in a Court of Justice; and laying your hand on the sacred volume of the Gospel, prepare to utter the solemn adjuration, “ So help me God!” let me admonish, let me implore you to examine well the state of your hearts, to dismiss

* Paley, c. viii. † St. Luke, x. 27.—vi. 31.

every

every corrosive passion, every latent prejudice, every concealed partiality, which may prevent the correct performance of your duty, either as Jurors, or Witnesses. Reflect on the wrong you will commit, both in the act, and the example; reflect on the retaliation to which you may be exposed; reflect on the importance of God's protection, which you wantonly renounce; reflect on the dreadful visitations of his Justice, which you wickedly imprecate, when you deviate, on this solemn occasion, in the slightest degree, from the paths of truth.

Let us also reflect, and enjoy the reflection with gratitude and hope, that as from a Christian and Patriot King, we derived all the blessings of an inestimable Constitution, so in these perilous times, to a Christian and Patriot King is the preservation of them entrusted. It will be no small demonstration of our sense of the goodness of Providence, that by an unblemished, firm, and resolute Loyalty to our pious Sovereign, we testify our gratitude.

Where-

Wherefore, in the name of God, and of Jesus Christ, his Son, our blessed Saviour, as the most effectual means to frustrate the hopes of all enemies of our Church and State, and to afford the most solid answer to all their little objections, let us all unanimously persevere, in our several stations, to pray for, and obey; to strengthen and defend, the most moderate, the wisest, the most pious frame of religion, that ever Christians enjoyed since the primitive age; the best, the freest, the most happy Constitution, and the purest and most humane system of Judicature, that ever was possessed by mankind. May we all agree in this undeniable truth, that those who would subvert the State, are mortal enemies to Religion; and that those who would destroy Religion, are equally enemies to the State.*

In opposition, then, to those who are

* See Sprat's Sermons, p. 239.

leagued

leagued with the "*power of darkneſs,** and
 "*with the ſpirit that now worketh in the*
children of diſobedience,† to overthrow
 the Altar and the Throne, let us "*put on*
the armour of light,‡ and the *breast-plate*
of faith,§ in ſupport of that Altar, againſt
 which our bleſſed Redeemer has declared,
 that "*the gates of hell ſhall not prevail,||* and
 in defence of that Throne, which God has
 founded in Mercy and Wiſdom,

"BY WHOM KINGS REIGN, AND PRIN-
 CES DECREE JUSTICE."

* Ephes. ii. 2.

† St. Luke, xxii. 53.

‡ Rom. xiii. 12.

§ Theſſ. v. 8.

|| St. Matt. xvi. 18.

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